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Prepared By: Mike Swift

Approved By: Felisa Cox

RESOLUTION AUTHORIZING A LOAN UNDER A LOAN AGREEMENT BETWEEN SHELBY COUNTY, TENNESSEE, AND THE TENNESSEE STATE SCHOOL BOND AUTHORITY IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$56,720,000 AND THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND OTHER DOCUMENTS RELATING TO SAID BORROWING; AND PROVIDING FOR THE APPLICATION OF THE PROCEEDS OF SAID BORROWING AND THE PAYMENT OF THE COUNTY'S OBLIGATIONS UNDER THE LOAN AGREEMENT AND AMENDING THE FY2010 CAPITAL IMPROVEMENT PROGRAM BUDGET. SPONSORED BY COMMISSIONER J. W. GIBSON.

WHEREAS, pursuant to the Tennessee State School Bond Authority Act, Sections 49-3-1201, et seq., Tennessee Code Annotated, as amended (the "Act"), the Tennessee State School Bond Authority (the "Authority") is authorized to issue its bonds or notes ("Qualified School Construction Bonds") to make loans to any county, metropolitan government or incorporated city or town, in the State to provide funds to acquire land for and to construct, repair, rehabilitate, improve or equip schools for such local governments, if the same qualifies to be financed through the issuance of "qualified school construction bonds" as defined in Section 54F of the Internal Revenue Code of 1986, as amended (the "Code") ("Qualified School Construction Bond Projects"); and

WHEREAS, the Authority has determined that it will issue its Qualified School Construction Bonds, Series 2009 (the "Bonds"), for the purpose of making loans to Shelby County, Tennessee (the "County") on behalf of the Shelby County Schools and Memphis City Schools, in addition to other cities and counties in the State, to fund Qualified School Construction Bond Projects; and

WHEREAS, the County has applied for a loan from the Authority and the County's application has been approved by the Authority for the purpose of receiving funds to acquire any land, if applicable, and to construct, repair, rehabilitate, improve and equip public school facilities in the County, including projects relating to the Shelby County School's Elmore Park Middle School replacement and various Memphis City School projects, all as more particularly identified in the Loan Agreement (as hereinafter defined) (collectively, the "Projects") which are each a Qualified School Construction Bond Project; and

WHEREAS, under the Act, the County is authorized to enter into a loan agreement with the Authority to finance the Projects; and

WHEREAS, it is hereby determined to be in the best interests of the County to finance the Projects through a loan from the Authority to the County (the "Loan Agreement") whereby the County will pledge its full faith and credit and unlimited taxing power to the payment of its obligations thereunder, including payment of amounts sufficient to pay its allocable share of the principal of and interest, if any, on the Bonds, costs of issuance of the Bonds, and certain administrative expenses; and

WHEREAS, the Loan Agreement shall be additionally secured by a pledge by the County of taxes imposed and collected by the State pursuant to law and appropriated and allocated to the County as identified by resolution of the Tennessee Local Development Authority and as established by Section 4-31-102, Tennessee Code Annotated, as amended from time to time ("State-Shared Taxes"), which have not been pledged or applied to any other indebtedness ("Unobligated State-Shared Taxes") in an amount equal to the maximum annual principal payments to be made under the Loan Agreement plus the amount of the Supplemental Coupon, if

any, plus the amount of the Conversion Coupon, if any (as those terms are defined in the Loan Agreement), plus an additional amount for administrative expenses not to exceed .20% per annum; and

WHEREAS, the County has Unobligated State-Shared Taxes available to be pledged, and such Unobligated State-Shared Taxes in the preceding fiscal year are in an amount greater than 100% of the maximum annual principal payments to be made under the Loan Agreement plus the amount of the Supplemental Coupon, if any, plus the amount of the Conversion Coupon, if any, calculated at rates not to exceed 2.5% and 8%, respectively, per annum plus any additional payment for administrative expenses to be made under the Loan Agreement if calculated at the rate of not to exceed .75% per annum; and

WHEREAS, there has been presented to this meeting the form of the Loan Agreement which appears to be in appropriate form and is an appropriate instrument to be executed and delivered for the purposes intended; and

WHEREAS, for the purposes of authorizing the loan from the Authority, the execution and delivery of the Loan Agreement by the County, the pledging of the County's full faith and credit and a portion of its Unobligated State-Shared Taxes for the payment of its obligations under the Loan Agreement, approving the assignment of such pledge to secure the Bonds, and authorizing the execution of such documents and certificates as shall be necessary to consummate the sale and delivery of the Bonds and of the Loan Agreement, the Board of County Commissioners (the "Governing Body") of the County adopts this Resolution; and

Whereas, it is understood and agreed by the parties to the Loan Agreement that the County is entering into such Loan Agreement on behalf of the Shelby County Schools and

Memphis City Schools, and that the representations, covenants, and agreement of the County therein are made in full reliance of like representations, covenants and agreements given to the County by each of the Shelby County Schools and Memphis City Schools who are the intended beneficiaries of the Loan Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Shelby County, Tennessee, as follows:

Section 1. Approval of Loan. For the purpose of providing funds to finance the costs of the Projects, including the payment of legal and fiscal costs incident to the issuance and sale of the Bonds and the Loan Agreement and making and receiving the loan herein authorized, there is hereby authorized a loan (“Loan”) from the Authority in a principal amount not to exceed \$56,720,000. The County shall make payments of principal and interest in a manner consistent with Section 54A of the Code, until the final maturity date of the Bonds, which shall be established pursuant to the requirements of said Section 54A, all in accordance with the terms of this Resolution and the Loan Agreement but in any event repayment of the Loan shall occur by the end of calendar year 2029. The Loan shall not bear interest except for any Supplemental Coupon (not to exceed 2.5% per annum) or any Conversion Coupon (not to exceed 8% per annum), but only if and to the extent the same are required to be paid under the Loan Agreement and as the same are approved by the Authority in connection with the sale of the Bonds.

Section 2. Approval of Loan Agreement. The form, terms and provisions of the Loan Agreement which have been presented at this meeting are hereby approved and the County Mayor is hereby authorized, empowered and directed to execute and deliver and the County Clerk to attest the Loan Agreement in the name and on behalf of the County. The Loan

Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the County Mayor, the execution by such County Mayor to constitute conclusive evidence of approval of any and all changes or revisions therein. From and after the execution and delivery of the Loan Agreement, the County Mayor and the County Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed.

Section 3. Pledge of Taxes. (a) Pursuant to Section 49-3-1206(e)(1), Tennessee Code Annotated, the County hereby covenants and agrees, through the Governing Body, to annually levy and collect a tax upon all taxable property within the County, in addition to all other taxes authorized by law, sufficient to pay when due the amounts payable by the County under the Loan Agreement as and when they become due and payable and, for such purposes, the County hereby pledges such tax and the full faith and credit of the County to such payments, provided, however, that the tax hereinabove described will not be required to be levied or, if levied, may be proportionately reduced to the extent of funds appropriated by the Governing Body of the County to the payment of the amounts described above from other revenues of the County. Such tax, to the extent levied, shall be assessed, levied, collected and paid in like manner as other taxes of the County. Such tax shall not be included within any statutory or other limitation of rate or amount for the County but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law, whether public or private. Any amounts payable under the Loan Agreement falling due at any time when there are insufficient funds from the tax levy shall be

paid from current funds of the County out of the taxes hereby provided to be levied when the same shall have been collected.

(b) Pursuant to Section 49-3-1206(e)(2), Tennessee Code Annotated, the County additionally pledges its Unobligated State-Shared Taxes in an amount equal to the maximum annual principal payments under the Loan Agreement plus the Supplemental Coupon, if any, in an amount not to exceed 2.5% per annum and the Conversion Coupon, if any, in an amount not to exceed 8% per annum plus such additional amount for administrative expenses, not to exceed .75% per annum, as shall be sufficient to pay when due any additional payments due from County under the Loan Agreement as and when they become due and payable. The County hereby authorizes the Authority, without further recourse, to direct that Unobligated State-Shared Taxes pledged hereunder and due to the County be withheld and paid over to the Authority for credit to the County's payments due under the Loan Agreement at any time that such payments become delinquent and in an amount necessary to liquidate the amount of the delinquent payment.

Section 4. Consent to Assignment. The County hereby consents to the assignment pursuant to the Resolution of all the Authority's right, title and interest under the Loan Agreement as security for the Bonds.

Section 5. Additional Authorizations. All acts and doings of the County Mayor, County Clerk, the Chief Administrative Officer and Director, Division of Administration and Finance and any other officer of the County which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the execution and

delivery of the Loan Agreement as set forth herein shall be and the same hereby are in all respects, approved and confirmed.

Section 6. Separability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repeal of Conflicting Resolutions and Effective Date. All other resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are to be extent of such conflict hereby repealed and this Resolution shall be in immediate effect from and after its adoption.

Section 8. The FY2010 Capital Improvement Program Budget is hereby amended increasing Proceeds from State Loan and Expenditure to Schools by \$56,720,000 and such amount is hereby appropriated.

Section 9. The Memphis City Schools and Shelby County Schools are hereby requested to appear before the Commission on a quarterly basis to update Commissioners on the status of projects funded by order of this Resolution.

A C Wharton, Jr.
County Mayor

Date_____

ATTEST:

Clerk of County Commission

ADOPTED _____